IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5273 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHENDRASINGH JOGENDRASINGH SARDAR - Petitioner(s)

Versus

STATE OF GUJARAT THR' SECRETARY & 5 - Respondent(s)

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Appearance :

MR HARIN P RAVAL for Petitioner(s) : 1,
MR MENGDEY, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,3 - 5.
DS AFF.NOT FILED (N) for Respondent(s) : 2,
MR AR THACKER for Respondent(s) : 5,
MR HARSHADRAY A DAVE for Respondent(s) : 6,
MR HARDIK A DAVE for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 22/09/2006

ORAL JUDGMENT

1. **Rule.** Mr.Mengdey, learned AGP for Respondents No.1 to 4, Mr.Thacker, learned Counsel for Respondent No.5 and Mr.Dave, learned Counsel for Respondent No.6 waive service of notice of Rule. With the consent of the learned Counsel appearing for both the sides, the matter is finally heard today.

2. The petitioner has preferred the petition for challenging the order passed by the Collector and its confirmation thereof by the State Government, whereby the appeal preferred by the petitioner was dismissed on the ground of limitation.

3. Heard Mr.Raval, learned Counsel for the petitioner, Mr.Mengdey, learned AGP for the Respondents No.1 to 4 and Mr.Thacker and Mr.Dave, learned Counsel for the private respondents.

4. Upon hearing the learned Counsel for both the sides, it appears that the District Collector has not examined the matter on merits as the appeal was preferred after the expiry of the period of limitation, the appeal was not entertained. Even before the State Government the same situation prevailed.

5. I would have examined the matter further, however, the learned Counsel appearing for both the sides are on agreement that if the matter is remanded to the District Collector for examination of the case on merits. Therefore, I find that no further reasons are required to be recorded.

6. In view of the above, the impugned order passed by the Collector and its confirmation thereof by the State government are quashed and set aside with the direction that the appeal of the petitioner shall stand restored to the file of the District Collector and the District Collector shall examine the matter in accordance

with law on merits, after hearing all affected persons and shall pass appropriate order as early as possible, preferably within a period of six months from the date of receipt of the order of this Court.

7. The petition is allowed to the aforesaid extent. Rule partly made absolute. No order as to cost. Direct service is permitted.

22.9.2006 **(Jayant Patel, J.)**

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